IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ARNOLD WEINSTEIN	:	
v.	:	
CHARLES M. RITTER & ASSOCIATES, INC., CHARLES M. RITTER, U.S. INDUSTRIES, INC., ZURN INDUSTRIES, INC., ALEX MARINI US BRASS CORPORATION, FRANK SCHAETZKE, HANSGROHE, INC., CHRIS MARSHALL and WILLIAM WALLACE	:	Civil Action No. 02-CV-3836

MOTION TO DISMISS
UNDER F.R.C.P., RULE 12(b)
FOR LACK OF FEDERAL COURT JURISDICTION

COMES NOW CHARLES M. RITTER & ASSOCIATES, INC. ("Ritter & Associates"), a Pennsylvania corporation, by its counsel, HEANEY & KILCOYNE, LLC, and DANIEL B. PIERSON, V, ESQUIRE, and respectfully requests this Honorable Court dismiss the action as captioned above on the basis that this Court lacks subject matter jurisdiction for the reasons stated as follows:

1. Plaintiff seeks injunctive, declaratory, monetary and other relief by the laws of the United States; namely, the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 *et seq.*

2. Plaintiff alleges jurisdiction is conferred upon this Court by 28 U.S.C. § 1331 and 1343 and 29 U.S.C. § 626(c) (Complaint, ¶ 3).

3. The ADEA, in an employment age discrimination action, requires that a defendant be an employer under the definitions provided in the ADEA and that the plaintiff be an employee.

4. The ADEA at 29 U.S.C. § 630(b) defines an "employer" to mean "…a person engaged in an industry affecting commerce who has twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year…."

5. Plaintiff states at paragraph 19 of his Complaint that he "…became employed as a salesman for Ritter & Associates on or about January 1, 1998," and at paragraph 29 alleges that "…on or about March 6, 2000, Ritter terminated Plaintiff's employment without cause and because of his age (71)."

6. During the course of Plaintiff's employment at Ritter & Associates and at any time during the existence of Ritter & Associates, Ritter & Associates has never employed more than seven (7) employees at a single time. It is in this Motion averred under oath by Charles Ritter that, at the time of Plaintiff's employment with Ritter & Associates, there existed no more than five (5) employees, including one part-time employee who worked less than twenty hours per week.

7. For Federal Court subject matter jurisdiction to exist under the ADEA in this action, the defendant employer must meet the ADEA's definition of "employer," i.e., Defendant Ritter & Associates individuals must employ twenty (20) or more individuals. Rodgers v. Sugar Tree Products, Inc., CA 7 (Ill.) 1993, 7 F.3d 577, 137 A.L.R. Fed. 785,

reh. den. Defendant Ritter & Associates is not an employer. In similar fashion, under the ADEA, if Ritter & Associates is not an employer, Plaintiff is not an "employee." 29 U.S.C. § 630(f) states "the term 'employee' means an individual employed by an employer…"

8. No other Defendant, including Charles Ritter, could aid or abet an "employer" from discriminating against an "employee" unless these defined parties, an employer and an employee, exist. Accordingly, the case must be dismissed as to all Defendants as neither of the requisite statutory parties exist in this case. This Court lacks subject matter jurisdiction over all Defendants.

For the reasons stated above, Defendant Charles M. Ritter & Associates, Inc. respectfully requests that this case be dismissed because this Honorable Court lacks subject matter jurisdiction over any ADEA claim against Ritter & Associates as an employer and against all other named Defendants as aiders and abettors of Ritter & Associates.

Respectfully submitted,
HEANEY & KILCOYNE, LLC

By:_____

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